

**Meeting of the Central Valley Flood Protection Board  
7-23-10**

**Staff Report  
for  
Orestimba Creek Feasibility Study Amendment 1 to the Local Feasibility Cost  
Share Agreement**

---

**1.0 – ITEM**

Consider rescinding the Board's May 28th 2010 approval of Resolution No. 10-12 and replacing it with revised Resolution No. 10-12 (Attachment A) to:

1. Approve Amendment 1 (revised) to the West Stanislaus Local Feasibility Cost Sharing Agreement (LFCSA) between The Central Valley Flood Protection Board (CVFPB) and Stanislaus County (County) and
2. Delegate authority to the Board President to execute Amendment 1 substantially in the form attached hereto.

**2.0 – APPLICANT**

State: Central Valley Flood Protection Board / Department of Water Resources

Local: Stanislaus County

**3.0 – LOCATION**

The project area is located on the west side of the San Joaquin River in West Stanislaus County, California (see Attachment H).

**4.0 – DESCRIPTION**

As a result of flooding along Orestimba Creek in February 1980, the Reclamation Board, predecessor of the CVFPB requested the U.S. Army Corps of Engineers (USACE) investigate potential solutions. A reconnaissance study by the USACE was completed in July 1980 which resulted in a finding that a viable solution may exist to the flooding along Orestimba Creek. An earlier the USACE effort in January 1964 was cited in this Reconnaissance but no report was produced.

In March, 1995, Orestimba Creek experienced the largest storm in over 70 years of record. The floodwater overwhelmed the channel and flowed overland across

agricultural fields, backing up against a railroad embankment and inundating the City of Newman. Estimated damages from this flood event were \$5.6 million. The USACE estimates an additional \$100 million in annual costs. At the request of Stanislaus County, the USACE initiated another reconnaissance study on April 1997 which determined a likely federal interest in flood damage reduction for Orestimba Creek. The Study was initiated in September 1998.

The current level of protection is 4-year protection. The State and local agencies are pursuing 200-year flood protection for this urban area. The State has been an active participant throughout the Study by advising the USACE and local agencies of environmental issues with plan formulation and additional analysis needed to improve the alternative decision making process.

On March 16, 2010 the USACE produced a Schedule and Cost Change Request (SACCR) to increase the total Study cost. Over the course of the Study the total project cost has increased several times and subsequent amendments to the federal Agreement between the County and the USACE were made. Amendment 1 to the Local Feasibility Cost Share Agreement (LFCSA) between the County and the CVFPB increases the State contribution for the Study, which will contribute the remaining non-federal share. The County has contributed over \$2 million to the non-federal share of the total Study cost and wishes to amend the LFCSA with the State to secure federal funds for the completion of the Study.

Amendment 1 to the LFCSA will increase the total State contribution toward the Study from \$325,000 to \$770,000 thereby providing an additional \$445,000 to Stanislaus County for the completion of the Study in August 2011. The \$770,000 includes the initial \$325,000 contribution made by the State, as well as the additional \$445,000 needed to complete the Study; which totals \$770,000.

#### **4.1 – Background**

On May 28, 2010 the CVFPB approved Resolution No. 10-12, which was Amendment 1 to the LFCSA. Under the terms of the approved Amendment, the total State contribution to the Study was increased to a maximum of \$445,000. At the time of Board approval, Resolution No. 10-12, as presented by Board Staff, contained language that could be interpreted to limit the legal obligation of State funding to an amount which was less than the intended amount. Under the original agreement a contribution of \$325,000 was made toward the Study; therefore, the maximum State contribution of \$445,000 in Amendment 1 limited the additional State funds available to commit to \$120,000. The original intention of Board Staff was for an additional \$445,000 in State funds for the completion of the Study.

Board Staff requests re-approval of Resolution No. 10-12 with revised language providing additional funds of \$445,000. The approval of Resolution No. 10-12 is intended to replace the language of the previously approved Board action on May 28, 2010, thereby increasing the total State contribution to a maximum of \$770,000.

**5.0 – PREVIOUS BOARD ACTION**

<u>Date:</u>	<u>Action:</u>
December 18, 1998	The CVFPB approved a letter of intent to be non-federal sponsor of the Study.
April 16, 2002	The CVFPB signed a Local Feasibility Cost Share Agreement with Stanislaus County.
May 28, 2010	The CVFPB approved Resolution No. 10-12 amending the Local Feasibility Cost Share Agreement with Stanislaus County.

**6.0 – AUTHORIZATIONS**

Federal: 1964 House of Representatives resolution (House Document No. 367, 81<sup>st</sup> Congress, 1<sup>st</sup> Session);  
WRDA 1986

State: California Water Code Sections 8615, 12580 and 12616

**7.0 - STAFF RECOMMENDATION**

Consider rescinding the Board's May 28th 2010 approval of Resolution No. 10-12 and replacing it with revised Resolution No. 10-12 to:

1. Approve Amendment 1 (revised) to the West Stanislaus Local Feasibility Cost Share Agreement between the CVFPB and the County.
2. Delegate to the Board President the authority to execute Agreement 1 in substantially the form attached hereto.

**8.0 - LIST OF ATTACHMENTS**

- A. Revised Resolution No. 10-12
- B. Resolution No. 10-12 as approved on May 28, 2010 (with tracked changes)
- C. Revised Amendment 1
- D. LFCSA Amendment 1 as approved on May 28, 2010 (with tracked changes)
- E. Existing LFCSA
- F. Existing Feasibility Cost Share Agreement
- G. Location Map

STATE OF CALIFORNIA  
CALIFORNIA NATURAL RESOURCES AGENCY  
CENTRAL VALLEY FLOOD PROTECTION BOARD

RESOLUTION NO. 10-12

WEST STANISLAUS FEASIBILITY STUDY  
APPROVE THE AMENDED LOCAL FEASIBILITY COST SHARE AGREEMENT FOR  
THE WEST STANSILAUS FEASIBILITY STUDY

WHEREAS, on September 29, 1998, Stanislaus County entered into a Feasibility Cost-Sharing Agreement (FCSA) with the U.S. Army Corps of Engineers (USACE) for the West Stanislaus County Feasibility Study (Study); and

WHEREAS, on April 16, 2002, The Reclamation Board, predecessor of the Central Valley Flood Protection Board (Board) and Stanislaus County (County) executed a Local Feasibility Project Cost Sharing Agreement (LFCSA) for the Study; and

WHEREAS, the total Study cost is cost shared 50 percent non-federal and 50 percent federal between the County and the USACE; and

WHEREAS, the USACE requests the County to increase the total Study cost from \$5,927,100 to \$6,817,100, an increase of \$890,000; and

WHEREAS, the State agrees to pay the entire non-federal share of the remaining \$890,000 of Study costs, totaling \$445,000; and

WHEREAS, the Board and Local Sponsors desire to amend the LFCSA to incorporate the changes in the Study cost in accordance with the USACE request, increasing the total State contribution from \$325,000 to \$770,000, an increase of \$445,000; and

WHEREAS, the State is authorized by Water Code Section 12580 to engage in studies and coordination of water development projects undertaken by the State including flood control projects; and

WHEREAS, the Local Sponsor is authorized and empowered, under Government Code Section 25680 and Water Code Section 8100, to appropriate and expend general funds of the County to prevent overflowing and flooding of streams and rivers in the County.

////////////////////

NOW, THEREFORE, LET IT BE RESOLVED that the Central Valley Flood

Protection Board:

- 1) Approves Amendment 1 to the Local Feasibility Cost-Sharing Agreement with Stanislaus County for the West Stanislaus Feasibility Study in substantially the form attached hereto increasing the State's cost share up to a maximum of \$770,000; and
- 2) Delegates to the Board President the authority to execute the agreements in substantially the form attached hereto.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
President: Benjamin F. Carter

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Secretary: Maureen Doherty

Approved as to Legal Form and Sufficiency

\_\_\_\_\_  
State of California, Department of Water Resources  
Legal Counsel:  
Jeremy D. Goldberg

STATE OF CALIFORNIA  
~~THE~~CALIFORNIA NATURAL RESOURCES AGENCY  
CENTRAL VALLEY FLOOD PROTECTION BOARD

RESOLUTION NO. 10-12

WEST STANISLAUS FEASIBILITY STUDY  
APPROVE THE AMENDED LOCAL FEASIBILITY COST SHARE AGREEMENT FOR  
THE WEST STANSILAUS FEASIBILITY STUDY

WHEREAS, on September 29, 1998, Stanislaus County entered into a Feasibility Cost-Sharing Agreement (FCSA) with the U.S. Army Corps of Engineers (USACE) for the West Stanislaus County Feasibility Study (Study); and

Formatted: Space Before: Auto, After: Auto

WHEREAS, on April 16, 2002, The Reclamation Board, predecessor of the Central Valley Flood Protection Board (~~BOARD~~Board) and Stanislaus County (County) executed a Local Feasibility Project Cost Sharing Agreement (LFCSA) for the Study; and

WHEREAS, the total Study cost is cost shared 50 percent non-federal and 50 percent federal between the County and the USACE; and

WHEREAS, the USACE requests the ~~nonfederal sponsor~~County to increase the total Study cost from \$5,927,100 to \$6,817,100, an increase of \$890,000; and

Formatted: Default, Right: 0 pt, Space Before: Auto, After: Auto

~~WHEREAS, the BOARD~~ WHEREAS, the State agrees to pay the entire non-federal share of the remaining \$890,000 of Study costs, totaling \$445,000; and

WHEREAS, the Board and Local Sponsors desire to amend the LCFA to incorporate the changes in the Study ~~Cost~~cost in accordance with the ~~Government's~~USACE request, increasing the total State contribution from \$325,000 to \$770,000, an increase of \$445,000; and

Formatted: Space After: Auto

WHEREAS, the State is authorized by Water Code Section 12580 to engage in studies and coordination of water development projects undertaken by the State including flood control projects; and

Formatted: Font color: Auto

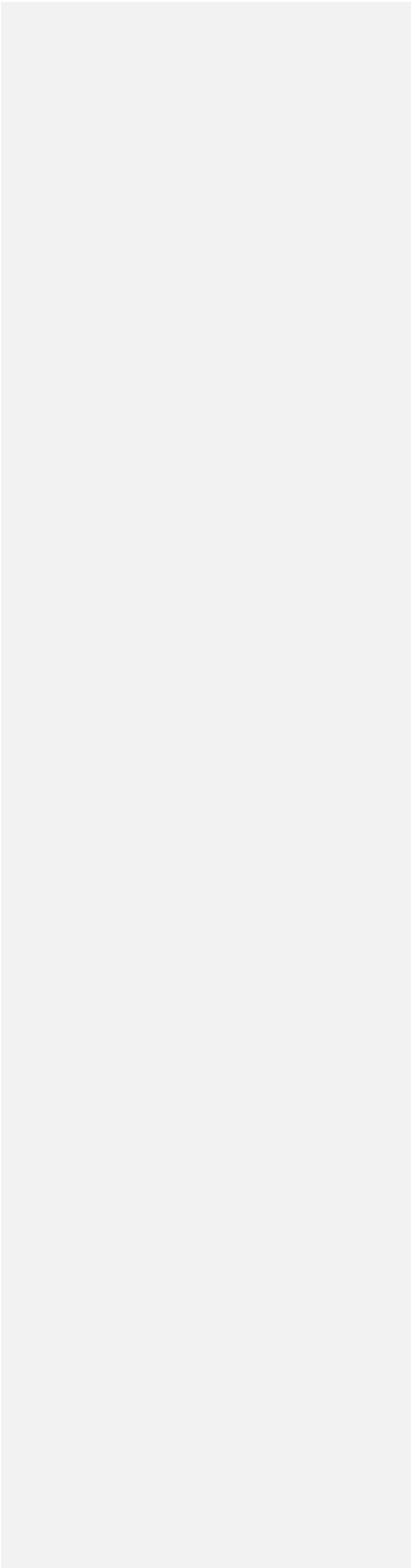
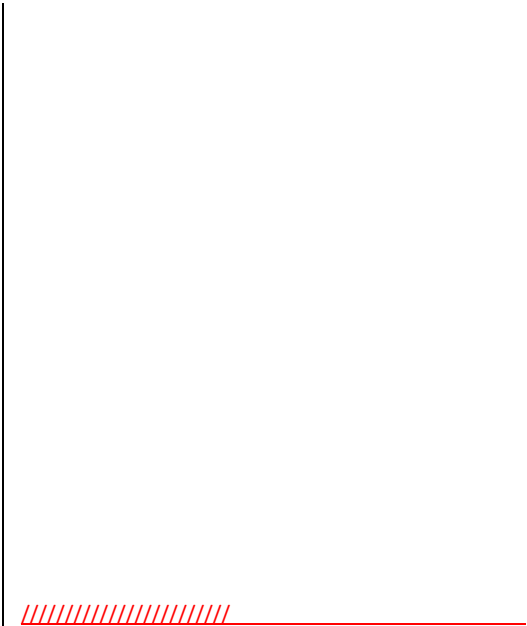
Formatted: Space After: Auto

WHEREAS, the Local Sponsor is authorized and empowered, under Government Code Section 25680 and Water Code Section 8100, to appropriate and expend general funds of the County to prevent overflowing and flooding of streams and rivers in the ~~county~~County.

Formatted: Right: 36 pt, Space Before: Auto, After: Auto

#####





NOW, THEREFORE, LET IT BE RESOLVED that the Central Valley Flood

Protection Board:

1) Approves Amendment 1 to the ~~Amended~~ Local Feasibility Cost-Sharing Agreement with Stanislaus County for the West Stanislaus Feasibility Study in substantially the form attached hereto increasing the State's cost share up to a maximum of \$~~445,770,000.00~~ and

2) Delegates to the Board President the authority to execute the \_\_\_\_\_ agreements ~~in substantially the form attached hereto.~~

2)

By: \_\_\_\_\_ Date: \_\_\_\_\_  
~~President~~ President: Benjamin F. Carter

By: \_\_\_\_\_ Date: \_\_\_\_\_  
~~Secretary~~ Secretary: Maureen Doherty-

Approved as to Legal Form and Sufficiency

Jeremy D. Goldberg

Legal Counsel

State of California, Department of Water Resources

Legal Counsel:

Jeremy D. Goldberg

Formatted: Space Before: Auto, After: Auto

Formatted: No bullets or numbering

Formatted: No underline

Formatted: No underline

Formatted: No underline

AMENDMENT NUMBER 1  
TO  
LOCAL FEASIBILITY COST SHARING AGREEMENT  
BETWEEN  
THE STATE OF CALIFORNIA, RECLAMATION BOARD  
AND  
COUNTY OF STANISLAUS  
FOR THE WEST STANISLAUS COUNTY, CALIFORNIA FEASIBILITY STUDY

This AMENDMENT is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between The State of California, acting by and through The Central Valley Flood Protection Board, successor to the Reclamation Board (hereinafter "BOARD") and the County of Stanislaus (hereinafter "Local Sponsors").

RECITALS:

WHEREAS, the BOARD and Local Sponsors originally entered into a Local Feasibility Cost Sharing Agreement (LFCSA) on April 16, 2002; and

WHEREAS, the U.S. Army Corps (hereinafter "USACE") requests the nonfederal sponsor increase the total Study cost from \$5,927,100 to \$6,817,100; *and*

WHEREAS, the non-federal share has increased by \$445,000; and

WHEREAS, the State agrees to fund all of the additional non-federal share increasing the total State share from \$325,000 to \$770,000; and

WHEREAS, the BOARD and Local Sponsors desire to amend the LFCSA to incorporate the changes in the Study Cost in accordance with the Government's request; and

WHEREAS, the State is authorized by Water Code Section 12580 to engage in studies and coordination of water development projects undertaken by the State including flood control projects; and

WHEREAS, the Local Participant is authorized and empowered, under Government Code Section 25680 and Water Code Section 8100, to appropriate and expend general funds of the county to prevent overflowing and flooding of streams and rivers in the county.

IT IS HEREBY AGREED to amend the LFCSA as follows:

1. Section 3.A.(3) shall be replaced in its entirety with the following paragraph:

“In the event that the BOARD secures any funding designated for payment of Study costs, the BOARD shall contribute those funds, up to a maximum contribution, including in-kind services, of \$770,000.”

IN WITNESS THEREOF, the Parties hereto have executed this amendment as of the day and year first above written.

THE CENTRAL VALLEY FLOOD  
PROTECTION BOARD OF THE STATE  
OF CALIFORNIA:

APPROVED AS TO LEGAL FORM  
AND SUFFICIENCY:

By \_\_\_\_\_  
Benjamin F. Carter, President

By \_\_\_\_\_  
Jeremy Goldberg, Counsel

Date: \_\_\_\_\_

Date: \_\_\_\_\_

THE COUNTY OF STANISLAUS:

APPROVED AS TO LEGAL FORM  
AND SUFFICIENCY:

By \_\_\_\_\_

By \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Contract 4600002229

Amendment 1

Page 1 of 3

AMENDMENT NUMBER 1  
TO  
LOCAL FEASIBILITY COST SHARING AGREEMENT  
BETWEEN  
THE STATE OF CALIFORNIA, RECLAMATION BOARD  
AND  
COUNTY OF STANISLAUS  
FOR THE WEST STANISLAUS COUNTY, CALIFORNIA FEASIBILITY STUDY

This AMENDMENT is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between The State of California, acting by and through The Central Valley Flood Protection Board, successor to the Reclamation Board (hereinafter "BOARD") and the County of Stanislaus (hereinafter "Local Sponsors").

RECITALS:

WHEREAS, the BOARD and Local Sponsors originally entered into a Local Feasibility Cost Sharing Agreement (LFCSA) on April 16, 2002; and

WHEREAS, the U.S. Army Corps (hereinafter "USACE") requests the nonfederal sponsor increase the total Study cost from \$5,927,100 to \$6,817,100; and

Formatted: Font: Not Italic

Formatted: Font: Not Italic

WHEREAS, the non-federal share has increased by \$445,000; and

WHEREAS, the State agrees to fund all of the additional non-federal share increasing the total State share from \$325,000 to \$770,000; and

WHEREAS, the BOARD and Local Sponsors desire to amend the LFCSA to incorporate the changes in the Study Cost in accordance with the Government's request; and

Formatted: Font: Not Italic

WHEREAS, the State is authorized by Water Code Section 12580 to engage in studies and coordination of water development projects undertaken by the State including flood control projects; and

WHEREAS, the Local Participant is authorized and empowered, under Government Code Section 25680 and Water Code Section 8100, to appropriate and expend general funds of the county to prevent overflowing and flooding of streams and rivers in the county.

Formatted: Indent: First line: 0 pt

Contract 4600002229  
Amendment 1  
Page 2 of 3

IT IS HEREBY AGREED to amend the LFCSA as follows:

1. Section 3.A.(3) shall be replaced in its entirety with the following paragraph:

|

Contract 4600002229  
Amendment 1  
Page 3 of 3

"In the event that the BOARD secures any funding designated for payment of Study costs, the BOARD shall contribute those funds, up to a maximum contribution, including in-kind services, of \$~~445~~770,000."

IN WITNESS THEREOF, the Parties hereto have executed this amendment as of the day and year first above written.

THE CENTRAL VALLEY FLOOD  
PROTECTION BOARD OF THE \_\_\_\_\_, APPROVED AS TO LEGAL FORM  
STATE OF CALIFORNIA \_\_\_\_\_, AND SUFFICIENCY:

By \_\_\_\_\_  
\_\_\_\_\_, AND SUFFICIENCY:

By \_\_\_\_\_  
\_\_\_\_\_  
Benjamin F. Carter, President

Date: \_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

THE COUNTY OF STANISLAUS: \_\_\_\_\_

By \_\_\_\_\_

Date: \_\_\_\_\_  
\_\_\_\_\_

APPROVED AS TO LEGAL FORM  
AND SUFFICIENCY:

By \_\_\_\_\_  
\_\_\_\_\_  
Jeremy Goldberg, Counsel  
Jeremy Goldberg, Counsel

Date: \_\_\_\_\_  
\_\_\_\_\_

APPROVED AS TO LEGAL FORM

By \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By \_\_\_\_\_

Date: \_\_\_\_\_  
Date: \_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

Formatted: Tab stops: 261 pt, Left

Formatted: Section start: Continuous, Number of columns: 2

Formatted: Tab stops: 261 pt, Left

Formatted: Tab stops: 261 pt, Left

Formatted: Indent: Left: 0 pt, Tab stops: Not at 279 pt

Formatted: Tab stops: 261 pt, Left

Formatted: Tab stops: 261 pt, Left

AND SUFFICIENCY:

Formatted: Tab stops: 261 pt, Left

By \_\_\_\_\_

Formatted: Tab stops: 261 pt, Left

Date: \_\_\_\_\_

Formatted: Font: Arial

LOCAL FEASIBILITY COST-SHARING AGREEMENT  
BETWEEN STATE OF CALIFORNIA, THE RECLAMATION BOARD  
AND  
COUNTY OF STANISLAUS  
FOR THE WEST STANISLAUS COUNTY, CALIFORNIA FEASIBILITY STUDY

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2001, by and between the State of California acting by and through The Reclamation Board (hereinafter Board) and the County of Stanislaus (hereinafter County).

RECITALS

WHEREAS, the U.S. Army Corps of Engineers has conducted a reconnaissance study on portions of West Stanislaus County, California, and determined that there appears to be a federal interest in providing flood protection and other benefits to portions of the west side of Stanislaus County, and has further determined that a "Feasibility Study"; (hereinafter the "Study") is justified and is actively working on the preparation of that Study; and

WHEREAS, on September 29, 1998, the County entered into a Feasibility Cost-Sharing Agreement (hereinafter "FCSA") with the Corps for the West Stanislaus County, California Feasibility Study; and

WHEREAS, on December 18, 1998, the Board sent the U.S. Army Corps of Engineers a letter of intent to become the nonfederal sponsor for the Study with the intent to amend the FCSA when State funding became available; and

WHEREAS, the County desires to maintain its lead nonfederal sponsor role for the Study; hence, the Board and the County agreed not to amend the FCSA but to enter into a Local Feasibility Cost Sharing Agreement, with the County being responsible for the functions of the Sponsor under the FCSA; and

WHEREAS, the State is authorized by Water Code Section 12580 to engage in studies and coordination of water development projects undertaken by the State, including flood control projects; and

WHEREAS, the County is authorized and empowered, under Government Code Section 25680 and Water Code Section 8100, to appropriate and expend general funds to prevent overflowing and flooding of streams and rivers in the county; and

WHEREAS, the Board and County desire to specify their respective contributions and other obligations during the term of the Study.



NOW, THEREFORE, the parties agree as follows:

1. Definitions and General Provisions - The terms defined in Article 1 of the FCSA shall have equivalent meaning in this Agreement as they pertain to the Board and the County. A copy of the FCSA is attached hereto as Exhibit A and incorporated by this reference in this Agreement.
2. Sponsor - The County shall perform all functions of the Sponsor as stated in the FCSA with the Corps, provided that the Board shall make the contributions required by this Agreement in paragraph 3. The County, as Sponsor, shall act as liaison between the Corps and the Board.
3. Local Cost-Sharing
  - A. Contributions
    - (1) The Board agrees to provide up to 50 percent of the nonfederal Sponsor's contributions to the cost of the Study as are required by Articles II and III of the FCSA; a portion or all of the Board's contribution may be made up of in-kind services if agreed to by the Corps, the Board, and the County.
    - (2) The Board shall make cash contributions payable to the County as required by Articles IIB, IIC, IIIB, and IIID of the FCSA.
    - (3) The Board shall contribute, up to a maximum contribution, including in-kind services, of an amount equal to the lesser of 50 percent of the nonfederal share of Study Costs or \$325,000.
  - B. Final Accounting - The County shall prepare and submit to the Board a final accounting of the Study Costs and cash contributions for the Study at or prior to termination of the FCSA. At such time, any cash surplus remaining from the cash contributions provided for in paragraph 3.A.(2) shall be credited and returned to the Board.
4. Records and Reports
  - A. The County shall coordinate with the Corps in the maintenance of adequate records of the expenses and revenues of the Study, and such records shall be available for inspection and audit by the designated representatives of the appropriate party.
  - B. The Board shall maintain adequate records of expenses and such records shall be available for inspection and audit by the County for a period of three years after final payment under this Agreement.

- C. The County shall furnish the Board with copies of any financial or progress reports received from the Corps within 30 days of receipt by the Board.
- D. Upon completion of the Study, the County shall furnish the Board with two copies of the Corps' Feasibility Report.
5. Designated Representative - The County's designated representative for administration of this Agreement shall be the Director of Public Works. The Board's designated representative for administration of this Agreement shall be the General Manager of The Reclamation Board.
6. Term of Agreement - The term of this Agreement shall be co-extensive with the term of the FCSA (see Article X.A of attached Exhibit A). For good cause, the Board may request the County to exercise its right, under Article X.A of the FCSA, to terminate or suspend the FCSA. "Good cause" includes but is not limited to the County's inability to secure the balance of its share of Study costs, and the Board's inability to appropriate necessary funding for its share of Study costs. The County shall exercise its right to terminate or suspend the FCSA within 30 days of receiving such a request. If the FCSA is terminated, either party may terminate or suspend this Agreement with 60 days' written notice. This Agreement shall not be effective until approved by the Department of General Services. This Agreement may be amended upon agreement by both parties and approval by the Department of General Services. Upon termination of this Agreement, all data and information generated as part of the Study shall be made available to both parties.
7. Severability Clause - If any provision of this Agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of this Agreement be construed to remain fully valid, enforceable and binding on the parties.
8. Notice - Any notice or other communication required under this Agreement shall be in writing and shall be delivered in person to the other party or parties or deposited in the United States mail, postage prepaid, addressed to the other party or parties at the following addresses:
- |                              |                           |
|------------------------------|---------------------------|
| General Manager              | Director of Public Works  |
| The Reclamation Board        | County of Stanislaus      |
| 1416 Ninth Street, Room 1601 | 1010 Tenth Street         |
| Sacramento, California 95814 | Modesto, California 95354 |
| (916) 653-5434               | (209) 525-7547            |
9. Standard Clauses - The Standard Clauses attached hereto as Exhibit B are incorporated by this reference. The provisions on the reverse of the face sheet of the form Standard Agreement are also incorporated by this reference.

Paragraphs 1 through 11 of this Agreement shall control over any conflicting provisions in Exhibits A and B.

10. Successors and Assigns - This Agreement shall be binding upon the successors and assigns of the respective parties.
11. Obligation of Future Appropriations - Nothing herein shall constitute nor be deemed to constitute an obligation of future appropriations by the Legislature of the State of California or by the Stanislaus County Board of Supervisors.



IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

**COUNTY OF STANISLAUS**

By   
Pat Paul  
Chair of the Board of Supervisors

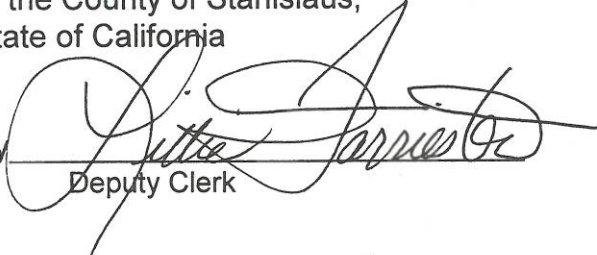
Dated: 12-14-01

**THE RECLAMATION BOARD  
STATE OF CALIFORNIA**

By   
Betsy Marchand  
President

Dated: 3/25/02

**ATTEST: Christine Ferraro Tallman**  
Clerk of the Board of Supervisors  
of the County of Stanislaus,  
State of California

By   
Deputy Clerk

Dated: 12-14-01

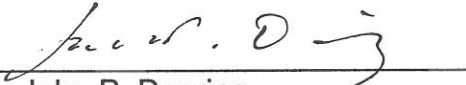
**APPROVED FOR LEGAL FORM AND  
SUFFICIENCY**

By   
David A. Sandino, Counsel  
The Reclamation Board

Dated: 2/5/02

**APPROVED AS TO FORM:**


Michael H. Krausnick  
County Counsel

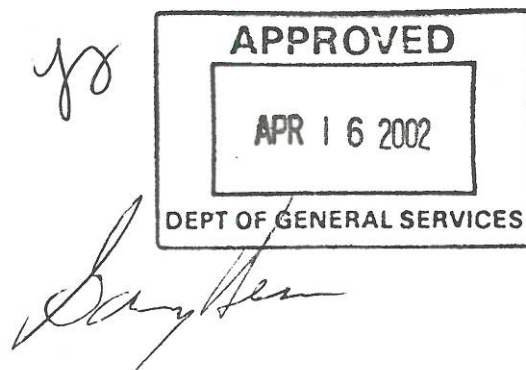
By   
John P. Doering  
Deputy County Counsel

Dated: \_\_\_\_\_

**APPROVED AS TO CONTENT:**

Department of Public Works

By   
George Stillman, Director  
Dated: \_\_\_\_\_



AGREEMENT  
BETWEEN THE DEPARTMENT OF THE ARMY  
AND  
STANISLAUS COUNTY  
FOR THE WEST STANISLAUS COUNTY, CALIFORNIA FEASIBILITY STUDY

THIS AGREEMENT is entered into this 29th day, of Sept, 1998, by and between the Department of the Army (hereinafter the "Government"), represented by the District Engineer executing this Agreement, and Stanislaus County (hereinafter the "Sponsor"),

WITNESSETH, that

WHEREAS, the Congress (Senate and/or House Committees) has authorized the U.S. Army Corps of Engineers to conduct a study of "the report on Sacramento-San Joaquin Basin Streams, California, published as House Document No. 367, 81<sup>st</sup> Congress, 1<sup>st</sup> Session, and other reports, with a view to determining whether any modifications of the recommendations contained therein are advisable at this time, with particular reference to further coordinated development of the water resources in the San Joaquin River Basin, California", pursuant to a May 8, 1964 resolution of the House Committee on Public Works and funds appropriated under the Energy and Water Development Appropriations Act, 1997, Public Law 104-206; and

WHEREAS, the U.S. Army Corps of Engineers has conducted a reconnaissance study of West Stanislaus County, CA with a view to determine the advisability of providing modifications in the interest of flood damage reduction pursuant to this authority, and has determined that further study in the nature of a "Feasibility Phase Study" (hereinafter the "Study") is required to fulfill the intent of the study authority and to assess the extent of the Federal interest in participating in a solution to the identified problem; and

WHEREAS, Section 105 of the Water Resources Development Act of 1986 (Public Law 99-662, as amended) specifies the cost sharing requirements applicable to the Study;

WHEREAS, the Sponsor has the authority and capability to furnish the cooperation hereinafter set forth and is willing to participate in study cost sharing and financing in accordance with the terms of this Agreement; and

WHEREAS, the Sponsor and the Government understand that entering into this Agreement in no way obligates either party to implement a project and that whether the Government supports a project authorization and budgets it for implementation depends upon, among other things, the outcome of the Study and whether the proposed solution is consistent with the Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies and with the budget priorities of the Administration;

NOW THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS

For the purposes of this Agreement:

A. The term "Study Costs" shall mean all disbursements by the Government pursuant to this Agreement, from Federal appropriations or from funds made available to the Government by the Sponsor, and all negotiated costs of work performed by the Sponsor pursuant to this Agreement. Study Costs shall include, but not be limited to: labor charges; direct costs; overhead expenses; supervision and administration costs; the costs of participation in Study Management and Coordination in accordance with Article IV of this Agreement; the costs of contracts with third parties, including termination or suspension charges; and any termination or suspension costs (ordinarily defined as those costs necessary to terminate ongoing contracts or obligations and to properly safeguard the work already accomplished) associated with this Agreement.

B. The term "estimated Study Costs" shall mean the estimated cost of performing the Study as of the effective date of this Agreement, as specified in Article III.A. of this Agreement.

C. The term "excess Study Costs" shall mean Study Costs that exceed the estimated Study Costs and that do not result from mutual agreement of the parties, a change in Federal law that increases the cost of the Study, or a change in the scope of the Study requested by the Sponsor.

D. The term "study period" shall mean the time period for conducting the Study, commencing with the release to the U.S. Army Corps of Engineers Sacramento District of initial Federal feasibility funds following the execution of this Agreement and ending when the Assistant Secretary of the Army (Civil Works) submits the feasibility report to the Office of Management and Budget (OMB) for review for consistency with the policies and programs of the President.

E. The term "PSP" shall mean the Project Study Plan, which is attached to this Agreement and which shall not be considered binding on either party and is subject to change by the Government, in consultation with the Sponsor.

F. The term "negotiated costs" shall mean the costs of in-kind services to be provided by the Sponsor in accordance with the PSP.

G. The term "fiscal year" shall mean one fiscal year of the Government. The Government fiscal year begins on October 1 and ends on September 30.

## ARTICLE II - OBLIGATIONS OF PARTIES

A. The Government, using funds and in-kind services provided by the Sponsor and funds appropriated by the Congress of the United States, shall expeditiously prosecute and complete the Study, in accordance with the provisions of this Agreement and Federal laws, regulations, and policies.

B. In accordance with this Article and Article III. A., III. B. and III. C. of this Agreement, the Sponsor shall contribute cash and in-kind services equal to fifty (50) percent of Study Costs other than excess Study Costs. The Sponsor may, consistent with applicable law and regulations, contribute up to 25 percent of Study Costs through the provision of in-kind services. The in-kind services to be provided by the Sponsor, the estimated negotiated costs for those services, and the estimated schedule under which those services are to be provided are specified in the PSP. Negotiated costs shall be subject to an audit by the Government to determine reasonableness, allocability, and allowability.

C. The Sponsor shall pay a fifty (50) percent share of excess Study Costs in accordance with Article III.D. of this Agreement.

D. The Sponsor understands that the schedule of work may require the Sponsor to provide cash or in-kind services at a rate that may result in the Sponsor temporarily diverging from the obligations concerning cash and in-kind services specified in paragraph B. of this Article. Such temporary divergences shall be identified in the quarterly reports provided for in Article III.A. of this Agreement and shall not alter the obligations concerning costs and services specified in paragraph B. of this Article or the obligations concerning payment specified in Article III of this Agreement.

E. If, upon the award of any contract or the performance of any in-house work for the Study by the Government or the Sponsor, cumulative financial obligations of the Government and the Sponsor would result in excess Study Costs, the Government and the Sponsor agree to defer award of that and all subsequent contracts, and performance of that and all subsequent in-house work, for the Study until the Government and the Sponsor agree to proceed. Should the Government and the sponsor require time to arrive at a decision, the Agreement will be suspended in accordance with Article X., for a period of not to exceed six months. In the event the Government and the sponsor have not reached an agreement to proceed by the end of their 6 month period, the Agreement may be subject to termination in accordance with Article X.

F. No Federal funds may be used to meet the Sponsor's share of Study Costs unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute.

G. The award and management of any contract with a third party in furtherance of this Agreement which obligates Federal appropriations shall be exclusively within the control of the Government. The award and management of any contract by the Sponsor with a third party in furtherance of this Agreement which obligates funds of the Sponsor and does not obligate Federal appropriations shall be exclusively within the control of the Sponsor, but shall be subject to applicable Federal laws and regulations.

### ARTICLE III - METHOD OF PAYMENT

A. The Government shall maintain current records of contributions provided by the parties, current projections of Study Costs, current projections of each party's share of Study Costs, and current projections of the amount of Study Costs that will result in excess Study Costs. At least quarterly, the Government shall provide the Sponsor a report setting forth this information. As of the effective date of this Agreement, estimated Study Costs are \$1,300,826 and the Sponsor's share of estimated Study Costs is \$ 650,413. In order to meet the Sponsor's cash payment requirements for its share of estimated Study Costs, the Sponsor must provide a cash contribution currently estimated to be \$ 398,803. The dollar amounts set forth in this Article are based upon the Government's best estimates, which reflect the scope of the study described in the PSP, projected costs, price-level changes, and anticipated inflation. Such cost estimates are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Sponsor.

B. The Sponsor shall provide its cash contribution required under Article II.B. of this Agreement



in accordance with the following provisions:

★ 1. For purposes of budget planning, the Government shall notify the Sponsor by August 15 of each year of the estimated funds that will be required from the Sponsor to meet the Sponsor's share of Study Costs for the upcoming fiscal year.

2. No later than 30 calendar days prior to the scheduled date for the Government's issuance of the solicitation for the first contract for the Study or for the Government's anticipated first significant in-house expenditure for the Study, the Government shall notify the Sponsor in writing of the funds the Government determines to be required from the Sponsor to meet its required share of Study Costs for the first fiscal year of the Study. No later than 15 calendar days thereafter, the Sponsor shall verify to the satisfaction of the Government that the Sponsor has deposited the required funds in an escrow or other account acceptable to the Government, with interest accruing to the Sponsor.

3. For the second and subsequent fiscal years of the Study, the Government shall, no later than 60 calendar days prior to the beginning of the fiscal year, notify the Sponsor in writing of the funds the Government determines to be required from the Sponsor to meet its required share of Study Costs for that fiscal year, taking into account any temporary divergences identified under Article II. C. of this Agreement. No later than 30 calendar days prior to the beginning of the fiscal year, the Sponsor shall make the full amount of the required funds available to the Government through the funding mechanism specified in paragraph B.2. of this Article.

4. The Government shall draw from the escrow or other account provided by the Sponsor such sums as the Government deems necessary to cover the Sponsor's share of contractual and in-house fiscal obligations attributable to the Study as they are incurred.

5. In the event the Government determines that the Sponsor must provide additional funds to meet its share of Study Costs, the Government shall so notify the Sponsor in writing. No later than 30 calendar days after receipt of such notice, the Sponsor shall make the full amount of the additional required funds available through the funding mechanism specified in paragraph B.2. of this Article.

C. Within ninety (90) days after the conclusion of the Study Period or termination of this Agreement, the Government shall conduct a final accounting of Study Costs, including disbursements by the Government of Federal funds, cash contributions by the Sponsor, the amount of any excess Study Costs, and credits for the negotiated costs of the Sponsor, and shall furnish the Sponsor with the results of this accounting. Within thirty (30) days thereafter, the Government, subject to the availability of funds, shall reimburse the Sponsor for the excess, if any, of cash contributions and credits given over its required share of Study Costs, other than excess Study Costs, or the Sponsor shall provide the Government any cash contributions required for the Sponsor to meet its required share of Study Costs other than excess Study Costs.

D. The Sponsor shall provide its cash contribution for excess Study Costs as required under Article II. C. of this Agreement by delivering a check payable to "FAO, USAED, Sacramento District to the District Engineer as follows:



1. After the project that is the subject of this Study has been authorized for construction, no later than the date on which a Project Cooperation Agreement is entered into for the project; or

2. In the event the project that is the subject of this Study is not authorized for construction by a date that is no later than 5 years of the date of the final report of the Chief of Engineers concerning the project, or by a date that is no later than 2 years after the date of the termination of the study, the Sponsor shall pay its share of excess costs on that date (5 years after the date of the Chief of Engineers or 2 year after the date of the termination of the study).

#### ARTICLE IV - STUDY MANAGEMENT AND COORDINATION

A. To provide for consistent and effective communication, the Sponsor and the Government shall appoint named senior representatives to an Executive Committee. The Executive Committee will include the District Engineer, the Chief of Planning Division, the Deputy District Engineer for Project Management, and the Director of Stanislaus County Department of Public Works. Thereafter, the Executive Committee shall meet regularly until the end of the Study Period.

B. Until the end of the Study Period, the Executive Committee shall generally oversee the Study consistently with the PSP.

C. The Executive Committee may make recommendations that it deems warranted to the District Engineer on matters that it oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider such recommendations. The Government has the discretion to accept, reject, or modify the Executive Committee's recommendations.

D. The Executive Committee shall appoint representatives to serve on a Study Management Team. The Study Management Team shall keep the Executive Committee informed of the progress of the Study and of significant pending issues and actions, and shall prepare periodic reports on the progress of all work items identified in the PSP.

E. The costs of participation in the Executive Committee (including the cost to serve on the Study Management Team) shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

#### ARTICLE V - DISPUTES

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. The parties shall each pay 50 percent of any costs for the services provided by such a third party as such costs are incurred. Such costs shall not be included in Study Costs. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

## ARTICLE VI - MAINTENANCE OF RECORDS

A. Within 60 days of the effective date of this Agreement, the Government and the Sponsor shall develop procedures for keeping books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement to the extent and in such detail as will properly reflect total Study Costs. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to state and local governments at 32 C.F.R. Section 33.20. The Government and the Sponsor shall maintain such books, records, documents, and other evidence in accordance with these procedures for a minimum of three years after completion of the Study and resolution of all relevant claims arising therefrom. To the extent permitted under applicable Federal laws and regulations, the Government and the Sponsor shall each allow the other to inspect such books, documents, records, and other evidence.

B. In accordance with 31 U.S.C. Section 7503, the Government may conduct audits in addition to any audit that the Sponsor is required to conduct under the Single Audit Act of 1984, 31 U.S.C. Sections 7501-7507. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits shall be included in total Study Costs and shared in accordance with the provisions of this Agreement.

## ARTICLE VII - RELATIONSHIP OF PARTIES

The Government and the Sponsor act in independent capacities in the performance of their respective rights and obligations under this Agreement, and neither is to be considered the officer, agent, or employee of the other.

## ARTICLE VIII - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, nor any resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

## ARTICLE IX - FEDERAL AND STATE LAWS

In the exercise of the Sponsor's rights and obligations under this Agreement, the Sponsor agrees to comply with all applicable Federal and State laws and regulations, including Section 601 of Title VI of the Civil Rights Act of 1964 (Public Law 88-352) and Department of Defense Directive 5500.11 issued pursuant thereto and published in 32 C.F.R. Part 195, as well as Army Regulations 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army".

## ARTICLE X - TERMINATION OR SUSPENSION

A. This Agreement shall terminate at the conclusion of the Study Period, and neither the Government nor the Sponsor shall have any further obligations hereunder, except as provided in Article III. C.; provided, that prior to such time and upon thirty (30) days written notice, either party may terminate or suspend this Agreement. In addition, the Government shall terminate this Agreement immediately upon any failure of the parties to agree to extend the study under Article


II.E. of this agreement, or upon the failure of the sponsor to fulfill its obligation under Article III. of this Agreement. In the event that either party elects to terminate this Agreement, both parties shall conclude their activities relating to the Study and proceed to a final accounting in accordance with Article III. C. and III. D. of this Agreement. Upon termination of this Agreement, all data and information generated as part of the Study shall be made available to both parties.

B. Any termination of this Agreement shall not relieve the parties of liability for any obligations previously incurred, including the costs of closing out or transferring any existing contracts.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer for the U.S. Army Corps of Engineers, Sacramento District.

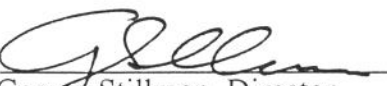
DEPARTMENT OF THE ARMY

BY

  
Colonel, Corps of Engineers  
District Engineer  
Sacramento District

STANISLAUS COUNTY

BY

  
George Stillman, Director  
Stanislaus County  
Department of Public Works

Attachment - Project Study Plan

**AMENDMENT No. 1**  
**To**  
**AGREEMENT BETWEEN**  
**THE DEPARTMENT OF THE ARMY AND STANISLAUS COUNTY**  
**FOR THE WEST STANISLAUS COUNTY, CALIFORNIA,**  
**FEASIBILITY STUDY**

This Amendment No. 1 is entered into this 22<sup>nd</sup> of May, 2001, by and between the Department of the Army (hereinafter referred to as "Government"), represented by the U.S. Army Engineer, Sacramento District (hereinafter referred to as "District Engineer"), and Stanislaus County (hereinafter referred to as "Sponsor"), represented by the Director of the Department of Public Works, Stanislaus County.

WITNESSETH, THAT:

WHEREAS, the Government and the Sponsor entered into an Agreement on September 29, 1998 to perform a feasibility study of West Stanislaus County, California, Feasibility Study (hereinafter referred to as "Study");

WHEREAS, Section 225 of the Water Resources Development Act of 2000, Public Law 106-541 (Section 225), amends Section 105(a)(1)(E) of the Water Resources Development Act of 1986, Public Law 99-662 (33 U.S.C. 2215(a)(1)(E), to allow the Sponsor to provide their entire share of Study Costs through the provision of in-kind services; and,

WHEREAS, the Government and the Sponsor desire to amend the Agreement to allow the increase in in-kind services provided by Section 225 to apply to work under this Agreement that has not yet been undertaken.

NOW, THEREFORE, the Government and the Sponsor agree to amend the Agreement as follows:

1. Article II.B. is changed by deleting "25" and substituting "50".
2. Notwithstanding the above, nothing in this Amendment requires the Government to refund or reimburse the Sponsor for funds previously contributed by the Sponsor to the Government for the Study.

3. Article III.A. is changed concerning the estimated Study cost and scope. As of the effective date of this amended Agreement, estimated Study costs are \$3,220,000 and the Sponsor's share of estimated Study costs is \$1,610,000. In order to meet the Sponsor's cash payment requirements for its share of estimated Study costs, the Sponsor must provide a cash contribution currently estimated to be \$329,000. The dollar amounts set forth in this Article are based upon the Government's best estimates, which reflect the revised scope of the Study described in the Project Management Plan, projected costs, price-level changes, and anticipated inflation. Such cost estimates are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Sponsor.
4. All other terms and conditions of the Agreement remain unchanged.

///////

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 which shall become effective upon the date it is signed by the District Engineer.

**STANISLAUS COUNTY**

By:   
George Stillman, Director  
Department of Public Works

**DEPARTMENT OF THE ARMY**

By:   
Colonel, Corps of Engineers  
District Engineer  
Sacramento District

**APPROVED AS TO FORM:**

Michael H. Krausnick  
County Counsel

By:   
John P. Doering  
Deputy County Counsel

AMENDMENT NO. 2  
TO  
AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
STANISLAUS COUNTY  
FOR THE WEST STANISLAUS COUNTY, CALIFORNIA FEASIBILITY STUDY

THIS AMENDMENT NO. 2 is entered into this 14th day of October, 2005, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, Sacramento District (hereinafter the "District Engineer"), and Stanislaus County (hereinafter the "Sponsor"), represented by the Director, Stanislaus County Department of Public Works.

WITNESSETH, THAT:

WHEREAS, the Government and the Sponsor entered into an Agreement on September 29, 1998 to perform a feasibility study of West Stanislaus County, California Feasibility Study (hereinafter the "Study");

WHEREAS, Section 225 of the Water Resources Development Act of 2000, Public Law 106-541 (Section 225), amends Section 105(a)(1)(E) of the Water Resources Development Act of 1986, Public Law 99-662 (33 U.S.C. 2215(a)(1)(E)), to allow the Sponsor to provide their entire share of Study Costs through the provision of in-kind services; and

WHEREAS, the Government and the Sponsor desire to amend the Agreement to allow the increase in in-kind services provided by Section 225 to apply to work under this Agreement that has not yet been undertaken.

NOW, THEREFORE, the Government and the Sponsor agree to amend the Agreement as follows:

1. Article III.A. is changed concerning the estimated Study Cost and scope. As of the effective date of this amendment, estimated Study Costs are \$5,927,100 and the Sponsor's share of estimated Study Costs is \$2,963,550. In order to meet the Sponsor's cash payment requirements for its share of estimated Study Costs, the Sponsor must provide a cash contribution currently estimated to be \$1,301,550. The dollar amounts set forth in this Article are based upon the Government's best estimates, which reflect the revised scope of the study described in the Project Management Plan, projected costs, price-level changes, and anticipated inflation. Such cost estimates are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Sponsor.

2. All other terms and conditions of the Agreement remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 2 which shall become effective upon the date it is signed by the District Engineer.

DEPARTMENT OF THE ARMY

STANISLAUS COUNTY

BY: *Ronald N. Light*  
Colonel, Corps of Engineers  
District Engineer  
Sacramento District  
*RONALD N. LIGHT*

BY: *George Stillman*  
George Stillman, Director  
Stanislaus County  
Department of Public Works

DATE: *October 14, 2005*

DATE: *9/20/05*

APPROVED AS TO FORM:

Michael H. Krausnick  
County Counsel

BY: *Edward A. Buttroughs*  
~~John P. Doering~~ *Edward A. Buttroughs*  
Deputy County Counsel

Attachment – Project Management Plan



## CERTIFICATE OF AUTHORITY

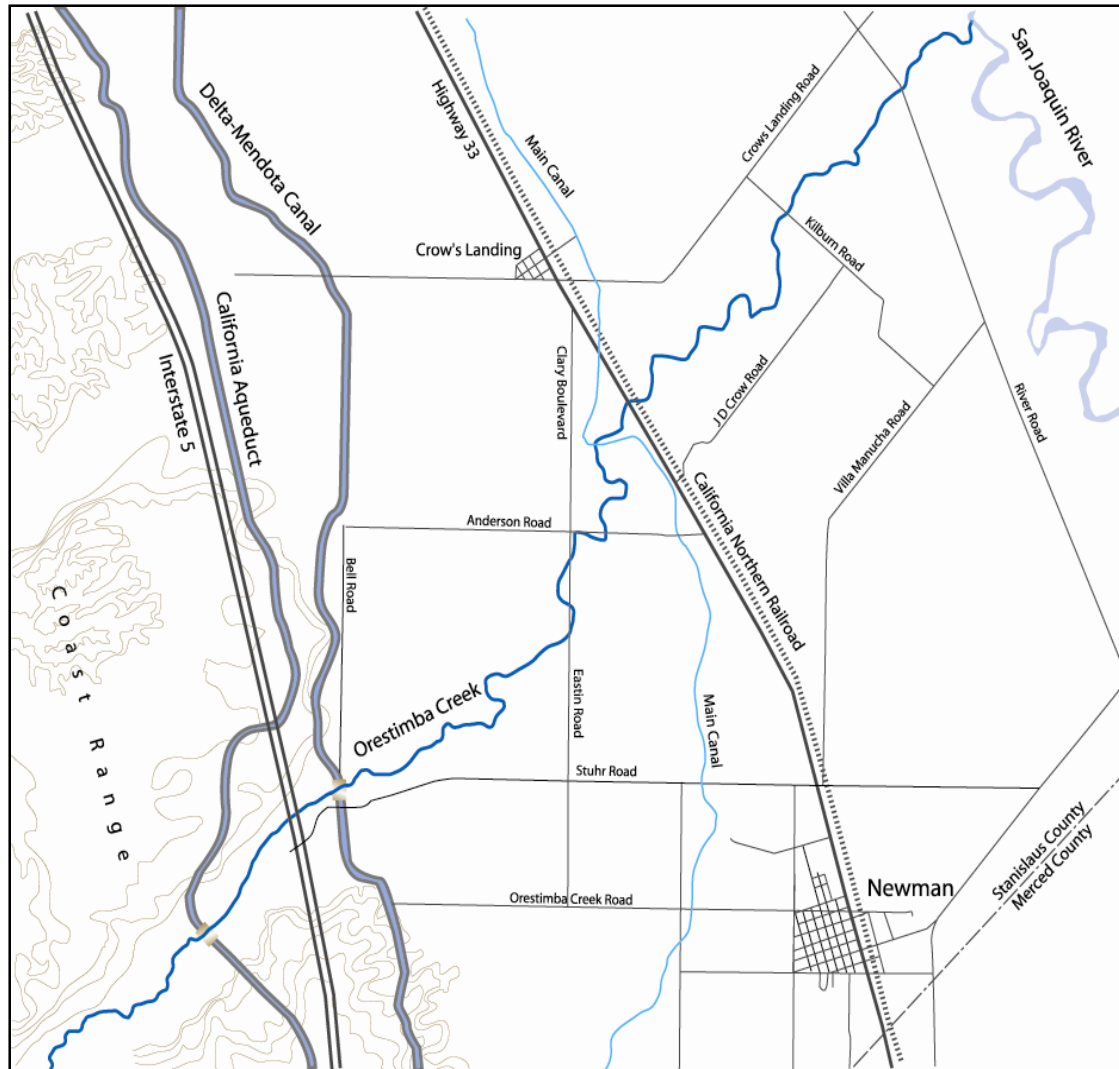
I, Michael Krausnick, do hereby certify that I am the principal legal officer of the Department of Public Works, Stanislaus County, California, that the Stanislaus County, Department of Public Works is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and Stanislaus County Department of Public Works in connection with design of the Orestimba Creek Project Flood Damage Reduction and Ecosystem Restoration Project, and that the persons who have executed this Agreement on behalf of Stanislaus County Department of Public Works have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this  
20<sup>th</sup> day of September 2005



MICHAEL KRAUSNICK  
County Counsel  
Stanislaus County

# West Stanislaus Feasibility Study Location Map



Study Location

